# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CIVIL APPLICATION No. 1706 of 2005**
**With**
**SPECIAL CIVIL APPLICATION No. 14750 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MAFATLALGORDHANDASPATEL - Petitioner(s)**

**Versus**

**LAXMIKANTBHAIPATELCHAIRMANCUMMAN.DIRECTOR & 1 - Respondent(s)**

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**Appearance :**
**SCA No.1706/05.**
MR PJ MEHTA for Petitioner(s) : 1,
MR DIPAK C RAVAL for Respondent(s) : 1,
MR AC GANDHI for Respondent(s) : 2,
SCA No.14750/05
MR DIPAK C RAVAL for the petitioner
MR PJ MEHTA for respondent.
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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 07/10/2005**

**ORAL JUDGMENT**

Rule in both the petitions. In Special Civil

Application No.1706 of 2005, learned advocate Mr.D.C.Raval waives service of notice of rule on behalf of respondent No.1 and learned advocate Shri A.C.Gandhi waives service of rule on behalf of respondent No.2. Learned advocate Mr.P.J.Mehta waives service of notice of rule in Special Civil Application No.14750 of 2005. At the joint request of the learned advocates appearing for the parties, both the petitions are taken up for final disposal today.

2. Special Civil Application No.14750 of 2005 has been filed by M/s.Cellulose Products of India Limited challenging the order dated 19th April 2001 passed by the Labour Court, Ahmedabad in Recovery Application No.2678 of 2000 filed by the respondent herein. On the other hand, Special Civil Application No.1706 of 2005 has been filed by the concerned workman praying for releasing the amount of bonus, gratuity, leave wages, etc. as ordered by the Labour Court.

3. The workman had raised an industrial dispute challenging his termination. His reference came to be allowed partially by award dated 16.9.99 passed by the Labour Court, Ahmedabad. It was held that in view of

closure of the establishment of the employer, there is no question of reinstatement of the workman in service. However, he should be paid his wages from 22.7.93 till he crossed the age of superannuation and all other benefits also should be paid to him accordingly. The employer challenged the award passed by the Labour Court by filing Special Civil Application No.9028 of 2000. In the said petition, learned single Judge of this Court on 17.9.01 while issuing rule stayed the order regarding backwages making it clear that for rest of the award there is no interim relief and except backwages whatever other benefits are required to be given to the workman, the same may be paid over within three weeks from the date of the order. It may be noted that shortly before this order was passed, recovery proceedings initiated by the respondent before the Labour Court succeeded and on 19.4.01 the Labour Court directed the Company to pay a sum of Rs.2,81,823/- by way of backwages and an amount of Rs.12,741/- by way of bonus as well as Rs.25,781/- by way of earned leave. The employer has challenged the said order passed by the Labour Court in the recovery proceedings. Detailed averments have been made to explain the delay in filing the petition.

4. It is pointed out that the workman had filed interim applications in Special Civil Application No.9028 of 2000, but such applications were turned down.

5. As noted, the workman has filed a separate petition and prayed for releasing the amount which he is entitled to under various orders.

6. From the above events, it would appear that though the recovery proceedings were allowed in favour of the workman, this Court subsequently stayed the award qua backwages. To that extent, therefore, the base order on which the recovery proceedings were initiated and allowed came to be stayed. Therefore, in so far as recovery order pertains to the payment of backwages is concerned, the workman is not entitled to receive the same at this stage.

7. As noted earlier, this Court in its order dated 17.9.2001 stayed only the payment of back-wages and in fact provided that the remaining amounts will be released within three months. Admittedly, such amounts have not been paid. The workman has also contended that he is aged about 70 years and is suffering from various

diseases. On all these grounds, it would not be proper to withhold the entire amount. One may not, however, lose sight of the fact that the Company has been closed down and Sale Committee has been appointed to dispose of the properties and to disburse the amounts to various creditors including the workers in proper proportion.

8. It is jointly pointed out that pursuant to the order passed by this Court in Misc. Civil Application No.2178 of 2004, the employer has deposited a sum of Rs.1,56,287.78 ps. which has been invested by the Registry. In the present case, it would be just and proper to provide for the release of the amount directed to be paid to the workman towards bonus and earned leave out of the amount deposited by the employer with this Court. Such release would be subject to the outcome of Special Civil Application No.9028 of 2000 filed by the employer.

9. It is accordingly directed that from the amount deposited by the employer as mentioned above, the workman will be paid a sum of Rs.12,741/- towards bonus and Rs.25,781/- towards earned leave. The Registry shall release the same in favour of the workman by an account

payee cheque. With these directions, both the petitions are disposed of. Rule in both the petitions are made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)